

Advisory Opinion

IECDB AO 2010-06

Subject: Employee Providing Training to Entity and Submitting Private Sector Bids to Entity

Bill Brand
Administrator
Division of Community Action Agencies
Iowa Department of Human Rights
Via Email

Dear Mr. Brand:

This opinion is in response to your meeting with the Board's staff and an email letter of August 27, 2010, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(12) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

You advise us that the Division of Community Action Agencies (DCAA) of the Iowa Department of Human Rights (IDHR) administers the federally funded Weatherization Assistance Program (WAP). DCAA contracts with local weatherization agencies, usually private sector non-profit entities, to implement WAP. These local entities hire contractors through state and federal procurement rules and the competitive bid process. The local entities are required to inspect each home that is weatherized. DCAA performs sample home inspections to ensure the work done by the local entity.

DCAA employs an individual that serves as the state training director for WAP. This involves providing technical training to staff employed by the local entities. The employee also owns a small heating and air conditioning company that would like to submit bids for furnace repair or replacement jobs on projects performed by the local entities. The employee is not involved in the development, solicitation, review, or awards of bids. The employee is not involved in the monitoring of the local entities or the inspection of homes.

QUESTION:

Is it a conflict of interest for the private sector company of the IDHR employee to submit bids for work done by a local entity when the IDHR employee provides training to the local entity?

OPINION:

Iowa Code section 68B.2A is the state conflict of interest law. That statute sets out three situations in which a state employee is in an impermissible conflict of interest:

1. Using government resources to benefit an outside employment or activity.
2. Receiving compensation from anyone other than the state employee's government agency for engaging in the performance of duties that are part of the employee's state duties.
3. The outside employment or activity is subject to the "official control, inspection, review, audit, or enforcement authority" of the state employee.

We first note that this situation might raise an appearance issue in that the employee is providing training to an entity to which his private sector company may submit a bid.¹ However, the training does not involve the bid process, the employee has no control over the bid process, the bidding is subject to both federal and state procurement regulations as well as the competitive bid process, and the employee has no inspection authority over the local entities.

In reviewing the three scenarios in which a conflict of interest exists, under #1, the employee would be prohibited from using the training sessions to promote or otherwise benefit his private sector company. Therefore, the employee should refrain from mentioning his private sector company in the training sessions or otherwise discussing the bidding process. It appears that #2 does not apply to this factual scenario. Under #3, so long as the employee merely provides training on WAP and does not otherwise on behalf of IDHR regulate the local entity or regulate his private sector company, this situation would not be an impermissible conflict of interest under Iowa Code section 68B.2A.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Gerald Sullivan
John Walsh
Patricia Harper
Saima Zafar
Carole Tillotson

Submitted by: W. Charles Smithson, Board Legal Counsel

¹ The Board also notes that its role is to act on situations that present an actual legal conflict of interest under the applicable law.